



**DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
1322 PATTERSON AVENUE SE SUITE 3000
WASHINGTON NAVY YARD DC 20374**

IN REPLY REFER TO:

5720
Ser 14/293, 296
25 Sep 2019

Taylor Amarel
MuckRock News
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411A Highland Ave.
Somerville, MA 02144

SUBJECT: FREEDOM OF INFORMATION ACT (FOIA) REQUESTS DON-NAVY-2019-009725/009769; FOIA APPEALS DON-NAVY-2019-010769/010804

This letter responds to your two FOIA appeals dated August 12, 2019, received in this office August 29, 2019. Because both of your appeals are substantially similar, I have consolidated them in order to provide a single response from this office.

In your first request, you sought “All emails sent to, from, or copied to Richard V. Spencer, from May 1, 2019 to Present Day containing any of the following non-case-sensitive key-strings: ‘USS Ford’, ‘elevators’, ‘Trump’, or ‘POTUS’”. Your second request sought “All emails sent to, from, or copied to Richard V. Spencer, from May 1, 2019 to Present Day containing any of the following non-case-sensitive key-strings: ‘Gallagher’, ‘Navy Achievement Medal’, or ‘John Richardson’”. The Department of the Navy’s FOIA Program Office (DNS-36) processed your requests as the Initial Denial Authority (IDA). DNS-36 denied both requests, explaining that as written, its terms preclude a knowledgeable individual from conducting a reasonable search using a reasonable amount of effort. You now appeal the IDA’s actions, asserting that your requests were clear and reasonable.

Your appeal is a request for a final determination under the FOIA. For the reasons set forth below, your appeals are granted.

Proper FOIA Request

A proper FOIA request must “reasonably describe” the records sought. 5 U.S.C. § 552(a)(3)(A). To that end, a requester must describe the specific records sought with sufficient detail to enable a knowledgeable agency official to locate the records “with a reasonable amount of effort.” 32 C.F.R. 701.8(c)(1); *see, e.g., Judicial Watch, Inc. v. Export-Import Bank*, 108 F. Supp. 2d 19, 27 (D.D.C. 2000).

Here, the IDA denied your requests, explaining that as written, its terms were overbroad. Specifically, the IDA asserted that your use of open-ended and disjunctive phrases created an imprecise scope within which a knowledgeable agency official could perform a reasonable search. I disagree.


The substance of each request did not contain open-ended phrases.¹ Indeed, it specifically described that which you sought: emails within an individual's email account, during a stated timeframe, containing up to four specific key-words. This information is sufficient to enable a knowledgeable agency official to perform a reasonable search. *See Shapiro v. CIA*, 170 F. Supp. 3d 147 (D.D.C. 2016) (finding that "FOIA's reasonable-description requirement does not doom requests that precisely describe the records sought, even if compliance might overwhelm an agency's response team."); *Cf. Yagman v. Pompeo*, 868 F.3d 1075, 1081 (9th Cir. 2017) (finding request not reasonably described where request failed to "suggest much in the way of times, dates, locations"). Please be advised that in accordance with federal case law your time limit to the "Present Day" will be to the date you submitted the FOIA requests.

By copy of this letter, I am remanding your case to the IDA in light of my determination that your original request was reasonable.² Accordingly, the IDA is directed to re-process your request using the search terms that you provided. I encourage the IDA or any Navy search personnel to contact you to determine if the search terms can be modified to reduce the administrative burden of this request. Once received, if you are dissatisfied with the IDA's final decision, you will retain the right to appeal to this office on whatever grounds you deem appropriate, so long as you do so within 90 calendar days from the date of the IDA's response.

As the Department of the Navy's designated adjudication official for your FOIA appeal, I am responsible for the agency's decision to grant your appeal and remand it to the IDA for further action. You may seek judicial review of this decision in an appropriate U.S. District Court. My office represents the U.S. Government and therefore may not assist you in this process.

If you have further questions or concerns for my office, my point of contact is Maj James McKeon, USMC, who may be reached at james.mckeon@navy.mil or (202) 685-4596.

Sincerely,



G. E. LATTIN
Director
General Litigation Division

Copy to:
DNS-36
SECNAV (SAL)
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¹ To the extent that the phrase "containing any" could be construed as open-ended, any such concern about the request's overall specificity is alleviated by separate, explicit, narrowing details.

² Please be advised this is not a directive to release any information. It is a remand only.